

APPEAL NO. 021032  
FILED JUNE 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 21, 2002. As to the sole appealed issue, the hearing officer determined that the appellant (claimant) had disability as a result of his \_\_\_\_\_, compensable injury from \_\_\_\_\_, through January 3, 2002. The claimant appealed on sufficiency grounds. The respondent (carrier) responded, objecting to documents attached to the claimant's appeal and otherwise urging affirmance.

DECISION

Affirmed.

Attached to the claimant's appeal were documents not offered into evidence at the hearing. Generally, the Appeals Panel does not consider evidence not offered at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ); Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. We do not find that to be the case with the documents attached to the appeal which were neither offered nor admitted into evidence at the hearing.

We have reviewed the complained-of determination and find that the hearing officer's determination is supported by sufficient evidence to be affirmed. The determination as to an injured employee's disability is a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PROTECTIVE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

---

Daniel R. Barry  
Appeals Judge

CONCUR:

---

Thomas A. Knapp  
Appeals Judge

---

Robert E. Lang  
Appeals Panel  
Manager/Judge